Belcon, Inc. *and* Building Material & Dump Truck Drivers Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Cases 21-CA-18466 and 21-CA-18783

September 15, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On April 21, 1981, Administrative Law Judge Gordon J. Myatt issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed limited cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Belcon, Inc., Los Angeles and Torrance, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to recognize Building Material & Dump Truck Drivers Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive bargaining representative of the employees in the unit set forth below.

WE WILL NOT refuse to implement and put into effect the terms of the collective-bargaining agreement consummated between us and the above-named Union on November 29, 1979.

WE WILL NOT refuse to bargain in good faith with the above-named Union as the exclusive representative of our employees in the unit set forth below by refusing to furnish the Union with the information it requested with respect to all unit employees on February 22, 1980.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the excercise of the rights guaranteed them in Section 7 of the Act.

WE WILL recognize the above-named Union as the exclusive bargaining representative of our employees in the following unit:

All truck drivers, pumpers, and warehousemen employed at our facilities located at 2600 South Eastern Avenue, Los Angeles, California, and 1908 Del Amo Avenue, Torrance, California; excluding all other employees, office clerical employees, sales employees, guards, and supervisors as defined in the Act.

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[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings. Respondent contends, however, that many of the Administrative Law Judge's credibility resolutions were based on factors other than demeanor and that his credibility findings were based instead on factual probabilities that were demonstrably erroneous. In contested cases, the Act commits to the Board itself the power and responsibility of determining the facts as revealed by a preponderance of the evidence and we base our findings as to facts on a *de novo* review of the entire record. *Standard Dry Wall, supra*. Having done so, we find that the Administrative Law Judge's credibility resolutions comport with the record. In any event, we note that the Administrative Law Judge commented that his Decision was also based on his observance of the demeanor of witnesses while testifying.

The Administrative Law Judge inadvertently stated that the second negotiation session was held on December 1, 1979. The correct date is November 1, 1979. Additionally, fn. 8 of his Decision incorrectly states that Respondent's President Morgan presented Respondent's final offer to the striking employees on November 29. In fact, Union President McFadden presented that offer to the employees.

[2] The Administrative Law Judge ordered, in the event the parties' collective-bargaining agreement was reduced to writing, that Respondent, upon request by the Union, should sign the agreement. The General Counsel has specifically excepted to the Administrative Law Judge's failure to include such a provision in the Notice To Employees. We find merit in the exception and accordingly the notice has been so modified.

In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

WE WILL sign, upon request by the Union, the written document embodying the agreement reached on November 29, 1979.

WE WILL implement, retroactively to November 15, 1979, the collective-bargaining agreement reached between us and the Union on November 29, 1979, and WE WILL make whole all employees, including any who have since left the payroll, for any losses of wages or benefits suffered by reason of our failure to give timely effect to said agreement, with interest.

WE WILL bargain in good faith with the above-named Union by supplying it with the information requested on all unit employees.

BELCON, INC.

DECISION

STATEMENT OF THE CASE

GORDON J. MYATT, Administrative Law Judge: Upon charges filed on December 6, 1979, and March 12, 1980, by Building Material & Dump Truck Drivers Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (hereafter called the Union), against Belcon, Inc. (hereafter called the Respondent), the Regional Director for Region 21 issued an order consolidating the cases and a consolidated amended complaint and notice of hearing on April 22, 1980. The complaint alleges that since November 29, 1979,[1] and continuing thereafter, the Respondent has refused the Union's request to execute and implement a collective-bargaining agreement which was reached between the parties. The complaint further alleges that since December 3 and continuing thereafter the Respondent has withdrawn recognition of and refuses to bargain with the Union as the exclusive bargaining representative of its employees in an appropriate unit.[2] Finally, the complaint alleges that since Febuary 20, 1980, the Respondent has refused to furnish the Union with information necessary and relevant to its performance as the collective-bargaining representative of the unit employees. It is asserted that, by this conduct, the Respondent has violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, 29 U.S.C. §151, *et seq.* (hereafter called the Act).

The Respondent filed an answer which admitted certain allegations of the complaint, denied others, and specifically denied the commission of any unfair labor practices. By way of an affirmative defense the Respondent asserts that it lawfully withdrew recognition of the Union because it no longer represented a majority of the unit employees.

A hearing was held on this matter in Los Angeles, California, on July 8 and 9, 1980. All parties were represented by counsel and afforded full opportunity to examine and cross-examine witnesses and to present material and relevant evidence on the issues. Briefs were submitted by the General Counsel and the Respondent and have been duly considered.

Upon the entire record in this case, including my observation of the witnesses and their demeanor while testifying, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Delaware corporation engaged in the wholesale and retail sale of industrial gases and welding equipment and supplies from two facilities located in Commerce and Torrance, California. The Respondent is a wholly owned subsidiary of Airco, Inc., which is headquartered in the State of New Jersey. In the course of its business operations, the Respondent annually receives gross revenue in excess of $500,000, and annually purchases and receives goods and products valued in excess of $50,000 directly from suppliers located outside the State of California. Accordingly, I find, and the pleadings admit, that the Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Building Material & Truck Drivers Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Negotiation for a New Collective-Bargaining Agreement*

The Respondent and the Union have been parties to successive collective-bargaining agreements since November 1967. The latest agreement was effective from November 15, 1976, through November 14, 1979. In September 1979, the Union sent the Respondent a notice to reopen the then-existing contract and requested a meeting to negotiate terms for a new successor agreement. David Morgan, president of the Respondent, arranged to meet with Gene McFadden, president of the Union, on October 25 at the union hall.[3]

At the October 25 meeting, McFadden presented Morgan with a list of the Union's proposals. (G.C. Exh. 7.) These proposals were keyed to various sections of the current agreement. Among other things, the Union was seeking a 1-year contract and wanted to add provisions for a pension plan in the agreement.[4] The past agree-

[1] Unless otherwise indicated, all dates herein refer to the year 1979.

[2] The parties stipulated that the appropriate bargaining unit is described as follows:

> All truck drivers, pumpers, and warehousemen employed by the Respondent at its facilities located at 2600 South Eastern Avenue, Los Angeles, California, and 1908 Del Amo Avenue, Torrance, California; excluding all other employees, office clerical employees, sales employees, guards, and supervisors as defined in the Act.

[3] McFadden and Morgan were the only negotiators for the respective parties.

[4] The Union also sought proposals to stop management from using foul language, for increases in the number of holidays and amount of vacation

Continued

ments between the parties were uniformly for 3-year terms and did not include pension benefits.

Very little was accomplished at this initial meeting regarding the substantive issues proposed by the Union. Morgan requested time to study the Union's proposals and the parties agreed to meet at a future date. Morgan testified that McFadden was not clear on what type of pension plan the Union had in mind, and he, Morgan, stated that the parties would have to thoroughly investigate various plans in order to find a suitable one.

Morgan testified that following his meeting with McFadden he called Robert Liebrich in Murray Hill, New Jersey. Liebrich was the manager of labor relations for Airco Welding Products, a division of Respondent's parent organization.[5] Morgan sent Liebrich a copy of the Union's proposals, and, with Liebrich's assistance, formulated counterproposals to be presented to the Union at the next bargaining session.

A second meeting was held on December 1. At this meeting, Morgan presented McFadden with the Respondent's counterproposals. (G.C. Exh. 8.) By its terms, the Respondent agreed to some of the initial proposals submitted by the Union and rejected others. The Respondent made an offer on wages and proposed that the contract be for a 3-year term. Regarding the pension plan request of the Union, the Respondent asked for more information. McFadden indicated to Morgan that the Union wanted the employees to be covered under the Western Conference of Teamsters Pension Plan. Since Morgan had no knowledge of this particular plan, McFadden secured a number of pamphlets which were kept at the union hall and gave them to Morgan. Morgan then asked for additional time to study the material before getting back to McFadden. There was no agreement between the parties on the wage issues. According to Morgan's testimony, the Union was looking at an agreement which the Respondent's parent company (Airco) had negotiated with the representative of the employees at its Duarte plant as a model for the agreement the Union was seeking to reach with the Respondent. The results of this meeting were inconclusive and the parties agreed to meet again.[6]

On November 8, McFadden met with Morgan at the Hyatt House in Commerce. They went over the respective proposals. McFadden testified that he told Morgan the Union would accept the same wage package the employees were receiving at Airco's Duarte plant. Morgan stated that they discussed proposed wage rates for a semidriver, since the Respondent was thinking of adding a semitruck to its operations. According to Morgan, McFadden suggested that the Respondent give the employees a wage increase of $1.50 per hour and let the employees purchase their own pension plan. Morgan rejected this idea, stating that the employees would spend the extra money rather than invest it for pension coverage. No firm agreement was reached on economic matters and the parties agreed to meet at the same place on November 13.

According to McFadden, on November 13 Morgan increased his wage offer to the Union. After some discussion, Morgan agreed to put the Respondent's final offer in writing and supply it to McFadden the following day. McFadden also testified that he and Morgan discussed the Union's request for a pension plan, but McFadden was unable to recall any specific details of this discussion.

Morgan, on the other hand, recalled that he gave McFadden a second set of proposals at this meeting, and they did not include any provision for a pension plan. (Resp. Exh. 2.) He stated that, when McFadden asked about the pension coverage, he replied that the time was too short to conduct an investigation in order to determine the best plan for their purposes. Morgan further testified that McFadden suggested he put the Respondent's final proposals in writing so that McFadden could take it to the employees. It was agreed at the conclusion of this particular meeting that Morgan would supply McFadden with the Respondent's final offer the next day.

The following day, McFadden went to the Respondent's plant and was given a copy of the final offer. (G.C. Exh. 10.) McFadden presented this offer to the employees at a meeting that evening with an accompanying recommendation that the employees accept the Respondent's terms for a new agreement. The employees disregarded McFadden's advice and rejected the Respondent's final proposal. According to McFadden, the employees wanted a larger wage increase and coverage under a pension plan. Since a strike authorization had previously been granted, picket signs were prepared for a strike to commence the following morning.

The employees started picketing the Respondent's facility the next day protesting the failure to reach a new agreement. There is testimony that, during the course of the strike, which lasted until November 29, pickets followed Respondent's trucks driven by strike replacements. There is also testimony that truck tires were slashed and that, in one instance, cables controlling the lift gate on a truck were cut. There is no evidence in the record, however, indicating which of the strikers, if any, were responsible for this damage.

McFadden and Morgan met again on November 16 at the union hall. Two employees were present at this meeting, which was apparently arranged by McFadden to assure the employees that he had accurately reported the Respondent's final offer to them on November 14.[7] Morgan testified that he was reluctant to negotiate in front of the employees and merely assured them that

time, for increases in wages, and for improved health and welfare benefits.

[5] Liebrich provided assistance to the Respondent on matters involving labor relations. Respondent's proposals and its negotiating position were cleared through him by Morgan prior to meeting with the Union. In addition, Morgan reported to Liebrich after every negotiating session in order to determine Respondent's position on the various matters discussed and the strategy to be adopted at future meetings.

[6] As in the case of all meetings with the Union, Morgan reported the events immediately to Liebrich in New Jersey.

[7] One of the individuals present at this meeting was Hector Cebreros, who had been employed as a driver by the Respondent. It was stipulated that Cebreros was lawfully discharged at the close of business on November 14 and was no longer a member of the bargaining unit. Nevertheless, he apparently joined the strike and participated in the picketing activity.

McFadden had properly represented them during the negotiations and in reporting the Respondent's final offer. He also indicated that the Respondent stood firm behind its last offer and had nothing more to propose. Morgan suggested to McFadden that they meet on November 18 to try to settle their dispute over the contract terms. When McFadden and Morgan met on November 18, very little was accomplished by way of fruitful negotiations. Morgan insisted that he could offer nothing more and the Union did not present any counterproposals.

The final bargaining session took place on November 29 at the coffeeshop in the Hyatt House. McFadden testified that he asked Morgan to increase the wage package so he could then have something to present to the employees in order to persuade them to go back to work. He also asked for an agreement on some type of pension provision. According to McFadden, Morgan stated that he did not have any more money to offer. He also told McFadden that he, Morgan, was considering establishing a company pension plan for the managerial employees and that possibly the unit employees could be included. However, there was nothing definite at that time. Morgan, on the other hand, testified that McFadden pleaded with him at this meeting for something to take back to the employees so the strike could be ended. He stated that he told McFadden the Respondent could not offer any more money. He also told McFadden that there could be no agreement on a pension plan because there was no time to investigate various plans in order to select a proper one. The meeting ended without resolving any of the outstanding differences between the parties.

McFadden testified that, after the meeting with Morgan, he went to the Respondent's plant and spoke to the striking employees. He again presented the Respondent's final offer to them and urged them to accept it.[8] This time the employees decided to heed McFadden's advice and voted to end the strike and return to work. McFadden then went into the plant and told Morgan that "we have a contract" because the men had accepted the Respondent's last offer. He wanted to know when the employees could return to work. According to McFadden, Morgan replied that he would have to get advice on whether there was an agreement. McFadden stated that, during his conversation with Morgan, he did not mention anything about a pension plan.

After leaving Morgan, McFadden returned to union headquarters. There he called the Union's attorney, who then dictated to one of the Union's secretaries over the telephone the contents of a mailgram. The mailgram was sent to the Respondent and stated that the Union had accepted the Respondent's final offer made on November 14, and further that the employees unconditionally offered to return to work on November 30 at their regular starting time. (G.C. Exh. 11.)[9]

The following morning McFadden, accompanied by the unit employees, went to Morgan's office at 7:30. Morgan stated that the employees would be placed on a preferential rehire list and called back when positions were available. McFadden protested, stating that the employees were ready to return then and that the parties had a contract. He also indicated that there was a grievance procedure in the contract and he would consult with the Union's attorney.

Regarding the events of November 29 and 30, Morgan testified that, on November 29, McFadden came into his office and said the striking employees had accepted the Respondent's final proposal and the parties had a contract. He stated that McFadden also said the employees wanted to become part of Respondent's pension plan whenever one was established. McFadden told Morgan that the employees were ready to go to work and he requested pay for them for that particular day. Morgan testified that he told McFadden that the employees would be placed on a preferential rehire list and called as vacancies occurred. According to Morgan, McFadden then said he would have to go to the "Labor Board."

After McFadden left, Morgan called Liebrich in New Jersey and advised him of the events. Liebrich testified that, when he received the call from Morgan, he was told that the employees accepted the Respondent's final offer conditioned on the fact that the employees were to be included in a pension plan if the Respondent established one, and that the employees be returned to work immediately. Liebrich said he felt the Union was making a counteroffer rather than accepting the Respondent's final offer. In Liebrich's judgment, the counteroffer imposed two conditions: The immediate return to work of the strikers and the inclusion of the unit employees in a pension plan when the Respondent instituted one. Liebrich advised Morgan that the Respondent was not responding favorably to any pension proposal nor was it going to "back off" the preferential rehire status for the former striking employees. Liebrich testified that he consulted with Airco's labor attorney and then called Morgan again. He told Morgan to expect McFadden and the employees to show up at the facility the next morning. He stated that he reaffirmed his prior advice on the preferential rehire and pension plan proposals, and further instructed Morgan to tell McFadden that the Respondent had a good-faith doubt that the Union represented a majority of the employees.

Morgan testified that McFadden and the employees returned the morning of November 30. He repeated his statement to McFadden that the employees would be placed on a preferential rehire list and called when openings occurred. McFadden wanted the employees paid for showing up to work that day and the day before. Morgan stated that he would have to get advice on that issue. He testified that he also told McFadden he would have to seek legal advice because he had a "good-faith

[8] Morgan testified that he did this because the strike was going badly and he felt nothing more could be gained by having the employees out on the picket line.

[9] Although the Union's confirmation copy of the mailgram was introduced into evidence, Morgan testified that he had never received the mailgram. At the time of the hearing herein, Morgan had left the Respondent's employ and was working for another company which was not affiliated with the Respondent or its parent concern. His successor at the Respondent, Bryant Reed, testified that he conducted a search of the Respondent's file, but was unable to find a copy of the mailgram. The Union's copy showed an address on Eastern Avenue rather than South Eastern Avenue, which was the Respondent's proper street address. However, the mailgram did contain the correct zip code.

doubt" that the Union represented a majority of the employees because of the sentiments of the strike replacements.

Sometime on November 30, Liebrich drafted a letter withdrawing recognition of the Union and sent it by telecopier to Morgan. The draft was subsequently typed on the Respondent's letterhead and sent to the Union on December 3. The letter stated the Respondent had a good-faith doubt that the Union represented a majority of the employees working in the positions covered by the expired agreement. For this reason, the Respondent refused to enter into further negotiations with the Union and withdrew its final offer from the "bargaining table." (G.C. Exh. 12.)

B. *The Strike Replacements*

After the commencement of the strike, the Respondent hired strike replacements in order to continue its business operations. One of these replacements, Richard Gormley, had been employed by the Respondent since November 4 on a part-time basis in the warehouse.[10] On November 16, Gormley agreed to switch over to the position of truckdriver to replace one of the striking drivers. Gormley testified that he told Dave Jackson, the Respondent's warehouse manager, at the time he became a driver that he did not want to become a member of the Union and that he was willing to cross the picket line. Jackson testified that, after several incidents with the striking employees, Gormley told him that he was more willing than ever to work for the Respondent. According to Jackson, Gormley said he was not bothering the pickets and he could not understand why they were harassing him.

Lamar Sepulveda was hired on November 16 as a replacement pumper. Jerrel Williams held this position prior to the strike. According to Sepulveda, at the time he was hired he told Jackson, Morgan, and Peterson, the latter was apparently a salesman for the Respondent, that he did not need a union to represent him and he did not want a union job. Jackson testified that Sepulveda said he was antiunion and did not want to join a union. On cross-examination, Sepulveda admitted that in his affidavit he indicated that Peterson was the only person to whom he spoke at the time he was hired. He stated in his affidavit that he told Peterson he did not want a union job because he did not care for the Union. He further acknowledged on cross-examination that it was not until the first part of January 1980 that he spoke with Jackson about his antiunion sentiments. He stated that Jackson asked him about his feelings regarding the Union because, according to Jackson, the employees might be asked how they felt about the Union. It was then that Sepulveda expressed his antiunion sentiments to Jackson. There was no mention in Sepulveda's affidavit that he ever voiced similar sentiments to Morgan.

Oliver Stringer was hired as a replacement truckdriver on November 16. Although Stringer testified that he told Jackson during the strike he did not want to be represented by the Union, he admitted on cross-examination that he really told Jackson he did not care whether the Union got back in or not, and that he was there to work. Jackson testified that Stringer said he was willing to work regardless of the strike because he needed the job.

George Degner was hired as a driver on November 16. He was the most vocal of the employees in his antiunion sentiments. Degner testified that he told Jackson at the time he was hired he did not want the Union to represent him. Both Degner and Jackson testified that Degner said, "Screw them. I don't need them." Degner stated that during the strike he repeated his sentiments with greater emphasis to Jackson. He told Jackson, "Fuck them. I don't need them."

Bruce Strom was also hired as a replacement driver on November 16. He testified that, when he was hired, he told Morgan he did not want to be represented by the Union because of problems he had with a union on another job. In his affidavit, however, Strom stated that he told Morgan it did not matter to him whether he crossed the picket line or not, as he was not presently a union member. Strom further stated in his affidavit that the subject of his being represented by the Union was not discussed, nor did he tell Morgan he did not wish to be represented by the Union. (G.C. Exh. 16.)

C. *The Refusal To Furnish the Requested Information to the Union*

By way of stipulation the parties agreed that on February 22, 1980, the Union submitted a written request to the Respondent asking for the names, social security numbers, and seniority dates of the unit employees. It was further agreed that the Respondent refused to provide the Union with this requested information.

D. *Concluding Findings*

The General Counsel contends that, when McFadden informed Morgan the employees had accepted the Respondent's final contract proposals on November 29, the parties had entered into a binding agreement. The General Counsel further contends that even in the absence of a binding agreement on that date the Respondent's withdrawal of recognition of the Union on December 3 was unlawful. In support of this position, the General Counsel argues that there is a rebuttable presumption that the Union continues as the majority representative after the expiration of the contract, and the Respondent has failed to establish that its doubts concerning the Union's majority status were based on objective considerations sufficient to overcome the presumption.

The Respondent, on the other hand, argues that a binding agreement was never consummated between the parties. The Respondent contends that McFadden's "acceptance" was no acceptance at all since it imposed two conditions; i.e., (1) that the unit employees be included in a pension plan whenever the Respondent established one for the managerial employees, and (2) that the striking employees be returned to work immediately. Proceeding from this premise, the Respondent then argues that the

[10] Because he had not been employed for 30 days when the strike occurred, Gormley had not become a member of the Union under the union-security provisions of the expired agreement.

Board's principle, as set forth in case law,[11] that strike replacements are presumed to support the union in the same ratio as those they replace, is totally unrealistic, especially in the circumstances of this case. Thus, the Respondent argues that the sentiments expressed by the strike replacements, coupled with their harassment during the course of the strike, were sufficient objective criteria to establish a good-faith doubt that the Union enjoyed majority support among the unit employees.

I consider the threshold question here to be whether a new collective-bargaining agreement was entered into on November 29. In my judgment, this question must be answered in the affirmative.

It is evident from the record that the parties were locked in an economic struggle after the employees rejected the Respondent's final offer on November 14. Until that time, McFadden and Morgan had been diligently negotiating, albeit unsuccessfully, in an effort to arrive at an agreement prior to the expiration date of the existing contract. Therefore, the strike which commenced on November 15 was economic in nature. It is equally evident that the Union's posture during the course of the strike was one of diminishing strength. The Respondent hired replacements for the striking employees and continued to operate its business without substantial interruption. The Union's lack of strength is further evidenced by the fact that its representative, McFadden, felt compelled to call on the Respondent's top official, Morgan, to come to union headquarters to assure the striking employees that the union representative was properly representing their interests and accurately reporting management's final proposal to them. In addition, when McFadden met with Morgan on November 29 at the Hyatt House, he made an unsuccessful plea to persuade the Respondent to increase the wage offer and agree to some type of pension plan in order to convince the strikers to accept the contract proposals. When his efforts failed, McFadden went back to the picketing employees and persuaded them to accept the final offer which they had previously rejected. McFadden candidly testified that he felt the employees could gain nothing more by the strike.

When these factors are considered, it defies logic to think that McFadden would have attempted to impose conditions on the employees' acceptance of the Respondent's final terms for a new collective-bargaining agreement. For this reason, I credit McFadden's version of his statements to Morgan on November 29 following the acceptance of the Respondent's proposals by the employees that "we have a contract." I further find his statement that the employees were ready to return to work immediately was nothing more than an unconditional offer on behalf of the striking employees to abandon the strike and cease withholding their services from the Respondent. My conclusions in this regard are reinforced by the Union's mailgram accepting Respondent's terms for a new agreement and making an unconditional offer on behalf of the strikers to return to work. I deem it unnecessary here to determine whether the Respondent had or had not received the mailgram. It is clear from the copy in evidence that the mailgram was sent through the Western Union office on November 29. What is important here is that the mailgram merely set forth in a more precise fashion the acceptance of the Respondent's final terms and the unconditional offer for the striking employees to return to work, as had been expressed previously by McFadden to Morgan that morning in another manner.

In these circumstances, I find Morgan's and Liebrich's testimony that McFadden attached conditions to the Union's acceptance of the Respondent's final terms to be unpersuasive. It is apparent from the events that took place during the strike that McFadden realized the strike had no serious economic impact on the Respondent's operation and the Union was reduced to ending it on the Respondent's terms. To suggest that McFadden then placed conditions, one of which had been steadfastly rejected by the Respondent throughout the negotiations, on the Union's acceptance of the Respondent's final offer is as unrealistic as the Respondent now asserts the Board's principle to be regarding the ratio of union support among strike replacements.

In view of the above, I find that on November 29 the Union unconditionally accepted the Respondent's final terms for a new agreement and made an unconditional offer on behalf of the striking employees to return to work. That the Respondent's officials chose to interpret McFadden's statements as imposing conditions on the Union's acceptance of the contract terms simply underscores the fact that at that point the Respondent's officials felt they could now rid themselves of the Union completely. I further find that upon the Union's acceptance of the Respondent's final offer the parties were bound by the terms of the new agreement even though it had not as yet been reduced to writing.

Therefore, when the Respondent formally withdrew recognition of the Union on December 3, it was during the term of the newly negotiated agreement and at a time when it was not lawfully permissible for Respondent to do so. *Pioneer Inn Associates, d/b/a Pioneer Inn and Pioneer Inn Casino*, 228 NLRB 1263, 1264 (1977), enfd. 578 F.2d 835 (9th Cir. 1978); *Seacrest Convalescent Hospital*, 230 NLRB 23 (1977); *Shamrock Dairy, Inc., Shamrock Dairy of Phoenix, Inc., and Shamrock Milk Transport Co.*, 119 NLRB 998 (1957), and 124 NLRB 494, 495–496 (1959), enfd. *sub. nom. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 310* v. *N.L.R.B.*, 280 F.2d 665 (D.C. Cir. 1960), cert. denied 364 U.S. 892. Accordingly, I find that by refusing to implement the agreement arrived at between the parties on November 29, and by withdrawing recognition of the Union on December 3, the Respondent violated Section 8(a)(5) of the Act. *Pioneer Inn, supra.*

Having found there was a valid agreement in existence between the parties on November 29, I do not deem it necessary to treat the Respondent's claim that it had a good-faith doubt based on objective considerations re-

[11] *James W. Whitfield, d/b/a Cutten Supermarket*, 220 NLRB 507 (1975); *Windham Community Memorial Hospital and Hatch Hospital Corporation*, 230 NLRB 1070 (1977), enfd. 577 F.2d 805 (2d Cir. 1978); *National Car Rental System, Inc., Car Rental Division*, 237 NLRB 172 (1978), enforcement denied 594 F.2d 1203 (8th Cir. 1979).

garding the Union's majority status. As the Respondent noted in its well-documented brief, the underlying premise for this contention is that a binding agreement between the parties had not been concluded. Since I have found to the contrary, this extensive argument must be rejected.

Finally, as to the information requested by the Union on February 22, 1980, and refused by the Respondent, I find the information to be presumptively relevant and necessary for the Union to act in its capacity as the bargaining representative of the unit employees. Inasmuch as the Respondent has not put on any evidence whatsoever to rebut this presumption, I find the Respondent's failure to supply the Union with the requested information to be an additional violation of Section 8(a)(5) of the Act. *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432 (1967); *Villa Care, Inc., d/b/a Edmonds Villa Care Center*, 249 NLRB 705 (1980).

CONCLUSIONS OF LAW

1. The Respondent, Belcon, Inc., is an employer within the meaning of Section 2(2) of the Act engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Building Material & Dump Truck Drivers Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to implement the terms of the collective-bargaining agreement consummated between it and the Union on November 29, 1979, and by withdrawing recognition of the Union on December 3, 1979, the Respondent violated Section 8(a)(5) and (1) of the Act.

4. By refusing to supply the Union with information requested on February 22, 1980, necessary and relevant to its function as the exclusive bargaining representative of the unit employees, the Respondent violated Section 8(a)(5) and (1) of the Act.

5. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent committed unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, it shall be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Since the Respondent has refused to implement the terms of the collective-bargaining agreement reached on November 29, 1979, it shall be ordered to give effect to the terms of that agreement and, in the event the agreement is reduced to writing, it shall, upon request by the Union, sign the document embodying the terms agreed upon between it and the Union. In addition, the Respondent shall be required to make whole all employees, including any who may have since left its payroll, for any losses of wages or benefits suffered by reason of the Respondent's failure to give timely effect to the agreement. Said wages or benefits, if any, shall be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977).[12] However, nothing herein shall be construed as requiring the Respondent to revert to wage or benefit levels below those currently in force. *Seacrest Convalescent Hospital, supra; Harold W. Hinson, d/b/a Hen House Market No. 3*, 175 NLRB 596 (1969).

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[13]

The Respondent, Belcon, Inc., Los Angeles and Torrance, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize Building Material & Dump Truck Drivers Local 420, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive collective-bargaining representative of its employees in the bargaining unit set forth below:

> All truck drivers, pumpers, and warehousemen employed by the Respondent at its facilities located at 2600 South Eastern Avenue, Los Angeles, California, and 1908 Del Amo Avenue, Torrance, California; excluding all other employees, office clerical employees, sales employees, guards, and supervisors as defined in the Act.

(b) Refusing to implement the terms of the collective-bargaining agreement reached between it and the Union on November 29, 1979.

(c) Refusing to furnish the Union the information requested by that labor organization on February 22, 1980, which is necessary and relevant to the Union's function as the exclusive collective-bargaining representative of the unit employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Implement, retroactively to November 15, 1979, the terms of the collective-bargaining agreement arrived at between it and the Union on November 29, 1979, making whole all employees, including any who may have since left the payroll, for any losses of wages or benefits suffered by reason of the failure to give timely effect to the agreement in conformity with the section of this Decision entitled "The Remedy."

(b) In the event the collective-bargaining agreement is reduced to writing, upon request by the Union, sign the

[12] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[13] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

written document embodying the agreement between it and the Union.

(c) Furnish the Union with the information requested on February 22, 1980, relating to the bargaining unit employees.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and relevant to determine the amounts owing under the terms of this recommended Order.

(e) Post at its Los Angeles and Torrance, California, facilities copies of the attached notice marked "Appendix."[14] Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[14] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."